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No. 73-2049

In The

Supreme Court of the United States

October Term, 1974

HERBERT F. STRAUB, JAKE H. EHRET, and KENNETH RUSTAD, as County Commissioners for Fallon County, Montana, and SILVER ROTH, as County Treasurer of Fallon County, Montana, *Petitioners,*

-vs-

ROBERT L. WOODAHL, Attorney General of the State of Montana, and the MONTANA DEPT. OF REVENUE, *Respondents.*

Respondents' Brief in Opposition

TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Petitioners statement of the case is satisfactory.

REASONS FOR DENYING THE WRIT

The due process guarantees of the 14th Amendment to the Constitution of the United States extend to all citizens of the United States. The party claiming a violation of the guaranty of due process of law must show that some personal or property right belonging to him has been infringed upon. Where a state agency is concerned there is no scope for invoking the due process guaranty as against the action of the state itself. This action began as a suit for a declaratory judgment in the Supreme Court of Montana, seeking to compel the County Commissioners and County Treasurer of Fallon County to collect certain monies as a tax designated to provide funding for public schools. The same tax was in effect in all of Montana's counties and at the same tax rate. In the case of such a tax it is the duty of such county officials to carry out the intentions of the legislature in enacting the tax. Those county officials are, in their official capacity, officers of the state. In *Coleman v. Miller*, 307 U.S. 433 (1938), review was denied on grounds other than standing. However, in a separate opinion on the standing issue, concurred in by Justices Black, Roberts and Douglas, Mr. Justice Frankfurter stated:

> ". . . an official has a legally recognized duty to enforce a statute which he is charged with enforcing. . . . We can only adjudicate an issue as to which there is a claimant before us who has a special, individualized stake in it. One who is merely the self-constituted spokesman of a constitutional point of view cannot ask us to pass on it." p. 466.

In an earlier case a state official sued a railroad in state court to collect a tax which had been reduced by an amendatory law relied on by the railroad. The official attacked the amendment on the ground that the bill had not been published as required by the state constitution. On appeal

to the Supreme Court of the United States, the court responded to that issue by stating that:

> ". . . the protection of the 14th amendment against state action is only for the benefit of those who are injured through the invasions of personal or property rights or through the discriminations which the amendment forbids. The constitutional guaranty does not extend to the mere interest of an official, as such, who has not been deprived of his property without due process of law." *Columbus & Ohio R.R. Co. v. Miller*, 283 U.S. 96, 100 (1930).

Of course, in this case it was not the county officials who brought the suit for declaratory judgment in the Supreme Court of Montana. However, it was their refusal to fulfill their obligations as county officials which forced the state to bring the original proceeding against them. They should not benefit from their own refusal to fulfill their duties by being heard to object on the grounds that their guaranty of due process has been violated.

No constitutional guaranty has been violated in this case. As county officials the petitioners have no personal or property right which can be violated. Only the taxpayers affected by the tax in question may be heard to complain of some personal or property right being violated and those taxpayers are not nor have they been before the court. Even in the case of a taxpayers' suit, there is no presumption of standing, rather in those cases, standing is normally a function of the substantiality of the taxpayers' interest in the outcome. *Flast v. Cohen*, 392 U.S. 83 (1965).

In the original proceeding of this case in state court the central issue was whether the county officials of Fallon County should be compelled to collect the tax in question. In their application for writ of certiorari, petitioners claim not to have had the opportunity to present certain factual matters which they allege would prove the constitutional violations complained of. While it is true that no opportunity was had to present facts at trial, it is also

true that both sides were allowed substantial opportunity to take advantage of the doctrine of judicial notice. The state court took notice of all facts necessary for its decision. Since the suit was brought to compel county commissioners to collect the tax is was necessary to examine the tax itself in order to determine its terms, purpose, and its effect. It was further necessary to examine the provisions of the 1972 Constitution of the State of Montana under which the statute was given effect. In addition, it was noticed that the purpose of the statute, quality public education, was a valid and proper goal to be achieved through the power of taxation. Once it was determined that the goals and means used to achieve those goals were within the power of the legislature, and that the means were reasonably calculated to achieve those goals, no further examination was necessary under the circumstances. As the Montana Supreme Court stated in its opinion:

> "Because of the view we have taken on the other issues in the case, it is clear that the factual questions alluded to in the final issue raised by respondents, while real, are not relevant. We will not consider that issue further." *State ex rel. Woodahl v. Straub*, 31 St.Rptr. 138, 520 P.2d 776, 783 (1974).

It should be noted at this point that decisions of state courts enjoy the same status as legislative enactments in regard to their presumption of validity. In *Darr v. Burford*, 339 U.S. 200 (1949), the rule was stated on page 205:

> "It was not to be presumed that the decision of the state court would be otherwise than is required by the fundamental law of the land, or that it would disregard the settled principles of constitutional law announced by this court. . ."

In view of the parties involved, the statute can be challenged only on its face. No other facts are required in determining its constitutionality in that respect other than the power of the legislature to so legislate.

Applications to this court for writ of certiorari have traditionally been subjected to a rule so fundamental that

it requires no citation. This court will entertain such applications for writ only where the case involves some substantial new issue. The reason for this rule has been that since certiorari is an extraordinary writ to be granted where no right to appeal will lie and is to be used only where the issue has never before been decided. The question becomes one of fairness. Would it serve the ends of justice to grant the writ even though no legal right exists which requires that the case be given consideration by the highest court in the land? It is wholly within the discretion of the court whether or not to grant the writ which would allow review of the petitioners' case by the Supreme Court of the United States. It is the contention of the respondents in this case that no conditions or circumstances surround this case which require review. In *San Antonio School Dist. v. Rodriguez*, 411 U.S. 1 (1973), this court decided issues so similar in nature to the issues presented by petitioners in this case that the matter can be decided on identical grounds.

In hearing this case for declaratory judgment, the Montana Supreme Court determined that it was not necessary to hear additional facts relating to particular amounts which individual taxpayers might be required to pay nor was it relevant that some inequality would persist in the new system of financing public education in Montana. It relied in substantial part on *Rodriguez*, supra, when it recognized that no system of financing public schools would or could remove all vestiges of inequality. The purpose of the new system is, however, to inject a new approach to school financing by equalizing the financial support given to each school district in order to eliminate the inherent inequalities which exist in publicly financed school systems as a result of the economic factors which are unique to each school district. It is not a function of the courts to determine what type of system will best achieve the goal of equality in the school system. If the court has determined that the method devised by the legislature is within the power of that body to legislate, that the purpose of the legislation is a valid purpose within constitutional limits,

and is reasonably calculated to achieve that purpose, then the court has met its obligation in reviewing the matter. In this case the Supreme Court of Montana has examined the legislation in question, codified as sections 75-6912, 75-6913, 75-6916, 75-6921, 75-6922 and 75-6923, Revised Codes of Montana, 1947, and the court has found it to meet the criteria set out above. As this court stated in *Rodriguez*, supra, at pp. 46, 47:

> ". . . a statute is not invalid because it might have gone further than it did, . . . a legislature need not strike at all evils at the same time, . . . The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized . . . . The passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies . . . ."

The opinion in *Rodriguez* also cited *Jefferson v. Hockney*, 406 U.S. 535 (1972), in which case the court, speaking directly to the problem of funding public schools, stated:

> "The very complexity of the problems of financing and managing a statewide public school system suggest that 'there will be more than one constitutionally permissible method of solving them', and that within the limits of rationality, 'the legislature's efforts to tackle the problems' should be entitled to respect." pp. 546, 547.

The present case is but one of a series of recent cases dealing with the financing of public schools. Two state courts have gone as far as holding that uniform state taxation for school support is constitutionally required. *Serrano v. Priest*, 96 Cal. Rptr. 601, 487 P.2d 1241 (1971); *Sweetwater Co. Plng. Comm. v. Hinkle*, ____ Wyo. ____, 491 P.2d 1234 (1971). Sections 75-6912, 75-6913, 75-6916, 75-6921, 75-6922 and 75-6923, R.C.M. 1947, were enacted for the general purpose of providing a statewide system of public schools with approximate equality of financial support. The means adopted by Montana to achieve that goal is a uniform statewide property tax, the proceeds of which

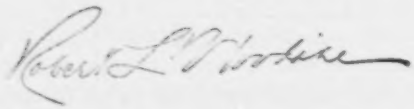
are distributed on a pro rata basis to schools. The results are dependent, of course, on the validity of the assumption that more money means better schools in those districts where the taxable value of property is low in relation to wealthier districts where it is assumed that the quality of education is commensurate with the greater amount of money generated by the higher taxable value of private property. It has been this assumption which has stood since the beginning of time as the basis for governmental policies and projects designed to improve the human condition. In the absence of clear evidence to the contrary, time has not changed the value of money in providing higher quality institutions such as public schools. Broad public policy requires that our public schools be of the highest attainable quality. It is in the interest of the entire State of Montana that its education system be one of high standards and not just in the interest of those persons residing in a particular school district.

The results of high quality education are not restricted to school district boundary lines, but extend beyond all borders in the bounty such an education produces for all citizens.

CONCLUSION

For the foregoing reasons the State of Montana respectfully requests the Court to deny petitioners' application for writ of certiorari.

Respectfully submitted,



ROBERT L. WOODAHL
Attorney General of Montana
State Capitol
Helena, Montana 59601

Attorney for Respondents

and THOMAS A. BUDEWITZ
Assistant Attorney General
Office of the Attorney General
State Capitol
Helena, Montana 59601

COUNSEL OF RECORD

ROBERT L. WOODAHL
Attorney General of
the State of Montana
State Capitol
Helena, Montana 59601

Attorney for Respondents

and THOMAS A. BUDEWITZ
Assistant Attorney General
Office of the Attorney General
State Capitol
Helena, Montana 59601

A. W. SCRIBNER
P. O. Box 514
Helena, Montana 59601

and DENZIL R. YOUNG
Baker, Montana 59313

Attorneys for Petitioners

PROOF OF SERVICE

I, ROBERT L. WOODAHL, Attorney General of Montana, attorney for respondents Robert L. Woodahl, Attorney General of the State of Montana, and the Montana Department of Revenue, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 12th day of August, 1974, I served copies of the foregoing Respondents' Brief in Opposition to Petition for Writ of Certiorari on the petitioners in this action, pursuant to Rule 33, as follows:

To Petitioners Herbert F. Straub, Jake H. Ehret, and Kenneth Rustad, as County Commissioners for Fallon County, Montana, and Silver Roth, as County Treasurer of Fallon County, Montana, by mailing copies in a duly addressed envelope, with first-class postage prepaid, to the following addresses:

A. W. Scribner
P. O. Box 514
Helena, Montana 59601

Denzil R. Young
Baker, Montana 59313

ROBERT L. WOODAHL
Attorney for Respondents

Attorney General of
the State of Montana
State Capitol
Helena, Montana 59601

SUPPLEMENTAL PROOF OF SERVICE

I, ROBERT L. WOODAHL, Attorney General of Montana, attorney for respondents Robert L. Woodahl, Attorney General of the State of Montana, and the Montana Department of Revenue, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 14th day of August, 1974, I served two copies of the foregoing Respondents' Brief in Opposition to Petition for Writ of Certiorari on each of the following parties in this action, pursuant to Rule 33, as follows:

R. Bruce McGinnis
Tax Counsel
Dept. of Revenue
Sam W. Mitchell Bldg.
Helena, MT 59601

Carroll C. Blend, Attorney
Office of the Supt. of
Public Instruction
State Capitol Bldg.
Helena, MT 59601

Robert J. Brooks
County Attorney
Courthouse
Broadus, MT 59317

Ralph L. Herriott
County Attorney
Courthouse
Hysham, MT 59038

Richard J. Conklin
County Attorney
Courthouse
White Sulphur Springs
Montana 59645

and eight copies to:

Sandall, Moses, Cavan & Kampfe
2501 Fourth Avenue North
Billings, Montana 59101

by mailing copies in a duly addressed envelope, with first class postage prepaid.

ROBERT L. WOODAHL
Attorney for Respondents

Attorney General of the
State of Montana
State Capitol
Helena, Montana 59601